



Senate

General Assembly

File No. 592

January Session, 2009

Substitute Senate Bill No. 845

Senate, April 9, 2009

The Committee on Public Health reported through SEN. HARRIS of the 5th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING OVERSIGHT OF NURSING HOMES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009*) The Department of Public
2 Health shall include on the department's web site a direct link to the
3 United States Department of Health and Human Services' Nursing
4 Home Compare database as located on the United States Department
5 of Health and Human Services' official United States Government Site
6 for People with Medicare. Such direct link shall be located in a
7 prominent place on the department's web site.

8 Sec. 2. Section 17b-351 of the general statutes is amended by adding
9 subsection (c) as follows (*Effective July 1, 2009*):

10 (NEW) (c) On or before December 31, 2009, and annually thereafter,
11 the Commissioner of Social Services, in consultation with the
12 Commissioner of Public Health, shall, within available appropriations,
13 complete an inventory of all publicly funded and private pay nursing
14 home beds in the state. On or before January 1, 2010, and annually

15 thereafter, the Commissioner of Social Services shall report to the joint
16 standing committees of the General Assembly having cognizance of
17 matters relating to human services and public health on the results of
18 the inventory, in accordance with section 11-4a. The Commissioner of
19 Social Services shall identify in such report any geographic areas in the
20 state that are in need of additional nursing home beds and the number
21 of beds needed in such geographical areas. The Commissioner of
22 Social Services shall also identify in such report any geographic areas
23 of the state in which there is a surplus of nursing home beds.

24 Sec. 3. Section 17b-352 of the general statutes is repealed and the
25 following is substituted in lieu thereof (*Effective from passage*):

26 (a) For the purposes of this section and section 17b-353, "facility"
27 means a residential facility for the mentally retarded licensed pursuant
28 to section 17a-277 and certified to participate in the Title XIX Medicaid
29 program as an intermediate care facility for the mentally retarded, a
30 nursing home, rest home or residential care home, as defined in section
31 19a-490.

32 (b) Any facility [which] that intends to (1) transfer all or part of its
33 ownership or control; [prior to being initially licensed;] (2) introduce
34 any additional function or service into its program of care or expand
35 an existing function or service; or (3) terminate a service or decrease
36 substantially its total bed capacity, shall submit a complete request for
37 permission to implement such transfer, addition, expansion, increase,
38 termination or decrease with such information as the department
39 requires to the Department of Social Services, provided no permission
40 or request for permission to close a facility is required when a facility
41 in receivership is closed by order of the Superior Court pursuant to
42 section 19a-545. The Office of the Long-Term Care Ombudsman
43 pursuant to section 17b-400 shall be notified by the facility of any
44 proposed actions pursuant to this subsection at the same time the
45 request for permission is submitted to the department and when a
46 facility in receivership is closed by order of the Superior Court
47 pursuant to section 19a-545.

48 (c) An applicant, prior to submitting a certificate of need
49 application, shall request, in writing, application forms and
50 instructions from the department. The request shall include [:(1) The]
51 the name of the applicant or applicants [;(2)] and a statement
52 indicating whether the application is for: [(A)] (1) A transfer of
53 ownership or control, (2) a new, additional, expanded or replacement
54 facility, service or function, [(B)] (3) a termination or reduction in a
55 presently authorized service or bed capacity, or [(C)] (4) any new,
56 additional or terminated beds and their type. [;(3) the] Certificate of
57 need applications, other than those seeking transfer of ownership or
58 control, shall include: (A) The estimated capital cost; [(4)] (B) the town
59 where the project is or will be located; and [(5)] (C) a brief description
60 of the proposed project. Such request shall be deemed a letter of intent.
61 No certificate of need application shall be considered submitted to the
62 department unless a current letter of intent, specific to the proposal
63 and in accordance with the provisions of this subsection, has been on
64 file with the department for not less than ten business days. For
65 purposes of this subsection, "a current letter of intent" means a letter of
66 intent on file with the department for not more than one hundred
67 eighty days. A certificate of need application shall be deemed
68 withdrawn by the department, if a department completeness letter is
69 not responded to within one hundred eighty days. The Office of the
70 Long-Term Care Ombudsman shall be notified by the facility at the
71 same time as the letter of intent is submitted to the department.

72 (d) Any facility acting pursuant to subdivision (3) of subsection (b)
73 of this section shall provide written notice, at the same time it submits
74 its letter of intent, to all patients, guardians or conservators, if any, or
75 legally liable relatives or other responsible parties, if known, and shall
76 post such notice in a conspicuous location at the facility. The notice
77 shall state the following: [(A)] (1) The projected date the facility will be
78 submitting its certificate of need application, [(B)] (2) that only the
79 department has the authority to either grant, modify or deny the
80 application, [(C)] (3) that the department has up to ninety days to
81 grant, modify or deny the certificate of need application, [(D)] (4) a
82 brief description of the reason or reasons for submitting a request for

83 permission, [(E)] (5) that no patient shall be involuntarily transferred
84 or discharged within or from a facility pursuant to state and federal
85 law because of the filing of the certificate of need application, [(F)] (6)
86 that all patients have a right to appeal any proposed transfer or
87 discharge, and [(G)] (7) the name, mailing address and telephone
88 number of the Office of the Long-Term Care Ombudsman and local
89 legal aid office.

90 (e) The department shall review a request made pursuant to
91 subsection (b) of this section to the extent it deems necessary,
92 including, but not limited to, in the case of a proposed transfer of
93 ownership or control, [prior to initial licensure] the financial viability
94 of the applicant, the impact on the facility rate, any real property lease
95 or debt instrument, any nursing facility management services
96 agreement and the financial condition of the applicant, the financial
97 responsibility and business interests of the transferee and the ability of
98 the facility to continue to provide needed services, or in the case of the
99 addition or expansion of a function or service, ascertaining the
100 availability of the function or service at other facilities within the area
101 to be served, the need for the service or function within the area and
102 any other factors the department deems relevant to a determination of
103 whether the facility is justified in adding or expanding the function or
104 service. The commissioner shall grant, modify or deny the request
105 within ninety days of receipt thereof, except as otherwise provided in
106 this section. Upon the request of the applicant, the review period may
107 be extended for an additional fifteen days if the department has
108 requested additional information subsequent to the commencement of
109 the commissioner's review period. The director of the office of
110 certificate of need and rate setting may extend the review period for a
111 maximum of thirty days if the applicant has not filed in a timely
112 manner information deemed necessary by the department. The
113 applicant may request and shall receive a hearing in accordance with
114 section 4-177 if aggrieved by a decision of the commissioner.

115 (f) The Commissioner of Social Services shall not approve any
116 requests for beds in residential facilities for the mentally retarded

117 which are licensed pursuant to section 17a-227 and are certified to
118 participate in the Title XIX Medicaid Program as intermediate care
119 facilities for the mentally retarded, except those beds necessary to
120 implement the residential placement goals of the Department of
121 Developmental Services which are within available appropriations.

122 (g) The Commissioner of Social Services shall adopt regulations, in
123 accordance with chapter 54, to implement the provisions of this
124 section. The commissioner shall implement the standards and
125 procedures of the Office of Health Care Access concerning certificates
126 of need established pursuant to section 19a-643, as appropriate for the
127 purposes of this section, until the time final regulations are adopted in
128 accordance with said chapter 54.

129 Sec. 4. Section 17b-339 of the general statutes is repealed and the
130 following is substituted in lieu thereof (*Effective from passage*):

131 (a) There is established a Nursing Home Financial [Advisory]
132 Oversight Committee to examine the financial solvency of nursing
133 homes on an ongoing basis and to support the Departments of Social
134 Services and Public Health in their mission to provide oversight to the
135 nursing home industry [which promotes] on issues concerning the
136 financial solvency of and quality of care provided by nursing homes.
137 The committee shall consist of: [seven members:] The Commissioner of
138 Social Services, or his designee; the Commissioner of Public Health, or
139 his designee; the Secretary of the Office of Policy and Management, or
140 his designee; the [director of the Office of Fiscal Analysis, or his
141 designee;] State Comptroller, or the State Comptroller's designee; the
142 Long-Term Care Ombudsman or the ombudsman's designee; and the
143 executive director of the Connecticut Health and Education Facilities
144 Authority, or his designee. [; and one representative of nonprofit
145 nursing homes and one representative of for-profit nursing homes
146 appointed by the Governor] The Commissioner of Social Services and
147 the Commissioner of Public Health shall be the chairpersons of the
148 committee.

149 [(b) The Commissioner of Social Services and the Commissioner of

150 Public Health shall be the chairpersons of the committee. Any vacancy
151 shall be filled by the appointing authority.]

152 [(c)] (b) The committee, upon receipt of a report relative to the
153 financial solvency of and quality of care provided by nursing homes in
154 the state, shall recommend appropriate action [for improving the
155 financial condition of any nursing home that is in financial distress] to
156 the Commissioner of Social Services and the Commissioner of Public
157 Health. The Commissioner of Social Services shall notify the committee
158 of any nursing home request for an interim rate increase pursuant to
159 section 17b-340.

160 [(d)] (c) Not later than January 1, [1999] 2010, and annually
161 thereafter, the committee shall submit a report on its activities to the
162 joint standing committees of the General Assembly having cognizance
163 of matters relating to appropriations and the budgets of state agencies,
164 human services and public health and to the select committee of the
165 General Assembly having cognizance of matters relating to aging, in
166 accordance with the provisions of section 11-4a.

167 (d) Not later than October 1, 2009, and quarterly thereafter, the
168 committee shall meet with the chairpersons and ranking members of
169 the joint standing committees of the General Assembly having
170 cognizance of matters relating to appropriations and the budgets of
171 state agencies, human services and public health, to discuss activities
172 of the committee relating to the financial solvency of and quality of
173 care provided by nursing homes.

174 Sec. 5. (NEW) (*Effective from passage*) (a) The Commissioner of Social
175 Services may require each owner of a chronic and convalescent
176 nursing home or rest home with nursing supervision to submit to the
177 Department of Social Services quarterly reports of accounts payable by
178 vendor and by days outstanding in such format as may be prescribed
179 by the commissioner. In addition, on and after July 1, 2009, each
180 chronic and convalescent nursing home or rest home with nursing
181 supervision shall obtain an annual financial audit of its operations
182 conducted by an independent auditor, and shall provide a copy of

183 such audit report to the commissioner. If such report indicates that a
184 facility may be experiencing financial distress, the commissioner shall
185 require such facility to submit specific financial information to the
186 department, including, but not limited to, debt agreements and interim
187 financial statements.

188 (b) The commissioner may also require: (1) Any nursing facility
189 management services certificate holder, pursuant to section 19a-561 of
190 the general statutes, as amended by this act, or any person or entity
191 that has a beneficial ownership interest of ten per cent or more in any
192 such nursing facility management services certificate holder to report
193 information concerning the financial condition of any facility managed
194 or owned by such holder or beneficial owner in this state or another
195 state, and (2) any person or entity that has a beneficial ownership
196 interest of ten per cent or more in a chronic and convalescent nursing
197 home or rest home with nursing supervision to report information
198 concerning the financial condition of any facility owned by such
199 person or entity in this state or another state, in such format as may
200 prescribed by the commissioner. For purposes of this subsection,
201 "beneficial ownership" includes, but is not limited to, ownership
202 through any level or relationship of parent and subsidiary
203 corporations and partnerships.

204 (c) If the Commissioner of Social Services determines that a chronic
205 and convalescent nursing home or rest home with nursing supervision
206 has undergone an adverse change in financial condition, based on a
207 review of the information provided to the commissioner pursuant to
208 subsections (a) and (b) of this section and a review of a chronic and
209 convalescent nursing home's or rest home with nursing supervision's
210 annual cost report submitted to the Department of Social Services
211 pursuant to section 17b-340 of the general statutes, the commissioner
212 shall notify the Commissioner of Public Health and the Nursing Home
213 Financial Oversight Committee, established pursuant to section 17b-
214 339 of the general statutes, as amended by this act, of such adverse
215 change in financial condition and may require such facility to report
216 monthly the department on the facility's cash availability, status of

217 vendor payments and employee payrolls. The Commissioner of Social
218 Services may also require the facility to report such other financial
219 information that the commissioner deems necessary to measure the
220 financial condition of such facility.

221 (d) The criteria used by the Commissioner of Social Services
222 pursuant to subsection (c) of this section to determine whether a
223 chronic and convalescent nursing home or rest home with nursing
224 supervision has undergone an adverse change in financial condition
225 shall include, but not be limited to: (1) The frequency of Medicaid
226 advances granted in accordance with section 119 of public act 07-1 of
227 the June special session; (2) unfavorable working capital ratios of assets
228 to liabilities; (3) a high proportion of accounts receivable more than
229 ninety days old; (4) a high proportion of accounts payable more than
230 ninety days old; (5) significant increases in accounts payable, unpaid
231 state or municipal taxes, state user fees or payroll-related costs; (6)
232 minimal equity or reserves or decreasing equity or reserves; (7) high
233 levels of debt and high borrowing costs; (8) significant increases in the
234 level of debts and borrowing costs; and (9) significant operating losses
235 for two or more consecutive years.

236 (e) If the Commissioner of Social Services determines that a chronic
237 and convalescent nursing home or rest home with nursing supervision
238 is in financial distress that may lead to the facility having insufficient
239 resources to meet its operating costs, the commissioner, in accordance
240 with section 11-4a of the general statutes, shall issue a report of such
241 findings to the joint standing committees of the General Assembly
242 having cognizance of matters relating to human services, public health,
243 and appropriations and the budgets of state agencies, and to the
244 Nursing Home Financial Oversight Committee, established pursuant
245 to section 17b-339 of the general statutes, as amended by this act. Such
246 report shall be in a format prescribed by the Nursing Home Financial
247 Oversight Committee.

248 Sec. 6. (NEW) (*Effective from passage*) (a) Each nursing facility
249 management services certificate holder, pursuant to section 19a-561 of
250 the general statutes, as amended by this act, for which rates paid by

251 the state are set pursuant to section 17b-340 of the general statutes,
252 shall, upon request by the Commissioner of Social Services, report its
253 annual costs to the commissioner in such form as may be prescribed by
254 the commissioner. Costs shall be reported on a fiscal year basis ending
255 on the thirtieth day of September and submitted on or before the
256 thirty-first day of December.

257 (b) No nursing facility management services certificate holder, who
258 is a related party to the owner of a chronic and convalescent nursing
259 home or rest home with nursing supervision, shall be paid fees,
260 including expenses from such facility for which it provides such
261 services, in excess of the management fee permitted by the Department
262 of Social Services in setting the rate for such facility pursuant to section
263 17b-340 of the general statutes unless the Commissioner of Social
264 Services, after a financial review of such holder, approves a
265 management fee in excess of such rate. For any violation of this
266 subsection, the Commissioner of Social Services may assess a civil
267 penalty not to exceed the amount by which the fee paid for such
268 services exceeds the approved management fee plus fifteen thousand
269 dollars. The provisions of this subsection shall not apply to any
270 management fee in effect on or before April 1, 2008. As used in this
271 section, "related party" means persons or organizations related
272 through an ability to control, ownership, family relationship or
273 business association, and includes persons related through marriage.

274 Sec. 7. Section 17b-4 of the general statutes is repealed and the
275 following is substituted in lieu thereof (*Effective from passage*):

276 (a) The Department of Social Services shall plan, develop,
277 administer, operate, evaluate and provide funding for services for
278 individuals and families who are served by the department [who] and
279 are in need of personal or economic development. In cooperation with
280 other social service agencies and organizations, including community-
281 based agencies, the department shall work to develop and fund
282 prevention, intervention and treatment services for such individuals
283 and families. The department shall: (1) Provide appropriate services to

284 individuals and families as needed through direct social work services
285 rendered by the department and contracted services from community-
286 based organizations funded by the department; (2) collect, interpret
287 and publish statistics relating to individuals and families serviced by
288 the department; (3) monitor, evaluate and review any program or
289 service which is developed, operated or funded by the department; (4)
290 supervise the establishment of pilot programs funded by the
291 department in local communities which assist and support individuals
292 and families in personal and economic development; (5) improve the
293 quality of services provided, operated and funded by the department
294 and increase the competency of its staff relative to the provision of
295 effective social services by establishing and supporting ongoing staff
296 development and training; and (6) encourage citizen participation in
297 the development of social service priorities and programs.

298 (b) The Department of Social Services shall study continuously the
299 conditions and needs of elderly and aging persons in this state in
300 relation to nutrition, transportation, home-care, housing, income,
301 employment, health, recreation and other matters. It shall be
302 responsible in cooperation with federal, state, local and area planning
303 agencies on aging for the overall planning, development and
304 administration of a comprehensive and integrated social service
305 delivery system for elderly persons and the aged. The department
306 shall: (1) Measure the need for services; (2) survey methods of
307 administration of programs for service delivery; (3) provide for
308 periodic evaluations of social services; (4) maintain technical,
309 information, consultation and referral services in cooperation with
310 other state agencies to local and area public and private agencies to the
311 fullest extent possible; (5) develop and coordinate educational
312 outreach programs for the purposes of informing the public and
313 elderly persons of available programs; (6) cooperate in the
314 development of performance standards for licensing of residential and
315 medical facilities with appropriate state agencies; (7) supervise the
316 establishment, in selected areas and local communities of the state, of
317 pilot programs for elderly persons; (8) coordinate with the Department
318 of Transportation to provide adequate transportation services related

319 to the needs of elderly persons; and (9) cooperate with other state
320 agencies to provide adequate and alternate housing for elderly
321 persons, including congregate housing, as defined in section 8-119e.

322 [(c) The Department of Social Services, in conjunction with the
323 Department of Public Health, may adopt regulations in accordance
324 with the provisions of chapter 54 to establish requirements with
325 respect to the submission of reports concerning financial solvency and
326 quality of care by nursing homes for the purpose of determining the
327 financial viability of such homes, identifying homes that appear to be
328 experiencing financial distress and examining the underlying reasons
329 for such distress. Such reports shall be submitted to the Nursing Home
330 Financial Advisory Committee established under section 17b-339.]

331 Sec. 8. (NEW) (*Effective from passage*) (a) The Commissioner of Social
332 Services, in consultation with the Banking Commissioner and the
333 executive director of the Connecticut Health and Educational Facilities
334 Authority created pursuant to section 10a-179 of the general statutes,
335 shall establish reasonable rates of indebtedness and reasonable real
336 property lease payments for chronic and convalescent nursing homes
337 and rest homes with nursing supervision. No chronic and convalescent
338 nursing home or rest home with nursing supervision licensed in this
339 state, or any owner of the property on which such facility is located
340 who is a related party to the owner of any such facility, shall increase
341 their indebtedness beyond the amount established pursuant to this
342 section or increase their real property lease payments unless such
343 increases are approved by the Commissioner of Social Services. A
344 chronic and convalescent nursing home or rest home with nursing
345 supervision, or any owner of the property on which such facility is
346 located who is a related party to the owner of such facility, may submit
347 a request pursuant to this section for such increase in such manner as
348 may be prescribed by the commissioner. The commissioner may
349 request such information as the commissioner deems necessary to
350 evaluate the request and shall approve, deny or modify the request not
351 later than sixty days after submission of any such requested
352 information. The commissioner may approve or modify a request

353 made in accordance with the provisions of this subsection only if the
354 commissioner determines that such increase will not materially affect
355 the financial viability of the facility or the quality of patient care. The
356 provisions of this section shall not apply to any indebtedness or lease
357 entered into by a chronic and convalescent nursing home or rest home
358 with nursing supervision on or before June 30, 2009. As used in this
359 subsection "related party" means persons or organizations related
360 through an ability to control, ownership, family relationship or
361 business association, and includes persons related through marriage.

362 (b) The proceeds of any loan in which a chronic and convalescent
363 nursing home or rest home with nursing supervision has pledged,
364 granted a lien or otherwise encumbered the assets of such facility shall
365 be used solely for the purpose of operating such nursing home facility
366 or providing improvements to the nursing home facility, unless such
367 facility receives prior approval from the Department of Social Services
368 to use such proceeds for other purposes related to such facility.

369 (c) Any violation of subsections (a) and (b) of this section shall
370 constitute a substantial failure to comply with the requirements
371 established under chapter 368v of the general statutes for purposes of
372 disciplinary action pursuant to section 19a-494 of the general statutes.
373 In addition to any action by the Commissioner of Public Health under
374 said section, the Commissioner of Social Services may impose a civil
375 penalty not exceeding twenty-five thousand dollars for each violation
376 and may refer the findings of the Department of Social Services to the
377 Commissioner of Public Health for appropriate action.

378 Sec. 9. (NEW) (*Effective July 1, 2009*) Each owner of a chronic and
379 convalescent nursing home or rest home with nursing supervision
380 shall submit annually to the Department of Social Services, along with
381 such facility's annual cost report, proof of the facility's insurance
382 liability coverage for negligence or medical malpractice, and damages
383 to property, and the amounts of such coverage in a form prescribed by
384 the Commissioner of Social Services. On or before January 1, 2010, and
385 annually thereafter, the department shall report, in accordance with

386 section 11-4a of the general statutes, information concerning the
387 insurance liability coverage of such facilities to the joint standing
388 committee of the General Assembly having cognizance of matters
389 relating to human services.

390 Sec. 10. Subsection (b) of section 19a-491 of the general statutes is
391 repealed and the following is substituted in lieu thereof (*Effective July*
392 *1, 2009*):

393 (b) If any person acting individually or jointly with any other person
394 [shall own] owns real property or any improvements thereon, upon or
395 within which an institution, as defined in subsection (c) of section 19a-
396 490, is established, conducted, operated or maintained and is not the
397 licensee of the institution, such person shall submit a copy of the lease
398 agreement to the department at the time of any change of ownership
399 and with each license renewal application. The lease agreement shall,
400 at a minimum, identify the person or entity responsible for the
401 maintenance and repair of all buildings and structures within which
402 such an institution is established, conducted or operated. If a violation
403 is found as a result of an inspection or investigation, the commissioner
404 may require the owner to sign a consent order providing assurances
405 that repairs or improvements necessary for compliance with the
406 provisions of the Public Health Code shall be completed within a
407 specified period of time or may, in accordance with the provisions of
408 section 19a-494, assess a civil penalty of not more than one thousand
409 dollars for each day that such owner is in violation of the Public Health
410 Code or a consent order. A consent order may include a provision for
411 the establishment of a temporary manager of such real property who
412 has the authority to complete any repairs or improvements required by
413 such order. Upon request of the Commissioner of Public Health, the
414 Attorney General may petition the Superior Court for such equitable
415 and injunctive relief as such court deems appropriate to ensure
416 compliance with the provisions of a consent order. The provisions of
417 this subsection shall not apply to any property or improvements
418 owned by a person licensed in accordance with the provisions of
419 subsection (a) of this section to establish, conduct, operate or maintain

420 an institution on or within such property or improvements.

421 Sec. 11. Subdivision (2) of subsection (b) of section 19a-493 of the
422 general statutes is repealed and the following is substituted in lieu
423 thereof (*Effective July 1, 2009*):

424 (2) Any change in the ownership of a facility or institution, as
425 defined in subsection (c) of section 19a-490, owned by an individual,
426 partnership or association or the change in ownership or beneficial
427 ownership of ten per cent or more of the stock of a corporation which
428 owns, conducts, operates or maintains such facility or institution, shall
429 be subject to prior approval of the department after a scheduled
430 inspection of such facility or institution is conducted by the
431 department, provided such approval shall be conditioned upon a
432 showing by such facility or institution to the commissioner that it has
433 complied with all requirements of this chapter, the regulations relating
434 to licensure and all applicable requirements of the Public Health Code.
435 Any such change in ownership or beneficial ownership resulting in a
436 transfer to a person related by blood or marriage to such an owner or
437 beneficial owner shall not be subject to prior approval of the
438 department unless: (A) Ownership or beneficial ownership of ten per
439 cent or more of the stock of a corporation, partnership or association
440 which owns, conducts, operates or maintains more than one facility or
441 institution is transferred; (B) ownership or beneficial ownership is
442 transferred in more than one facility or institution; or (C) the facility or
443 institution is the subject of a pending complaint, investigation or
444 licensure action. If the facility or institution is not in compliance, the
445 commissioner may require the new owner to sign a consent order
446 providing reasonable assurances that the violations shall be corrected
447 within a specified period of time. Notice of any such proposed change
448 of ownership shall be given to the department at least ninety days
449 prior to the effective date of such proposed change. For the purposes of
450 this subdivision, "a person related by blood or marriage" means a
451 parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For
452 the purposes of this subdivision, a change in the legal form of the
453 ownership entity, including, but not limited to, changes from a

454 corporation to a limited liability company, a partnership to a limited
455 liability partnership, a sole proprietorship to a corporation and similar
456 changes, shall not be considered a change of ownership if the
457 beneficial ownership remains unchanged and the owner provides such
458 information regarding the change to the department as may be
459 required by the department in order to properly identify the current
460 status of ownership and beneficial ownership of the facility or
461 institution. For the purposes of this subdivision, a public offering of
462 the stock of any corporation that owns, conducts, operates or
463 maintains any such facility or institution shall not be considered a
464 change in ownership or beneficial ownership of such facility or
465 institution if the licensee and the officers and directors of such
466 corporation remain unchanged, such public offering cannot result in
467 an individual or entity owning ten per cent or more of the stock of
468 such corporation, and the owner provides such information to the
469 department as may be required by the department in order to properly
470 identify the current status of ownership and beneficial ownership of
471 the facility or institution. For purposes of this subdivision, beneficial
472 ownership includes, but is not limited to, ownership through any level
473 or relationship of parent and subsidiary corporations and partnerships.
474 To the extent required by this subdivision, the licensee of such facility
475 or institution shall provide to the department the identities of, and any
476 other information required by the department regarding, the
477 individual shareholders, partners or members that have a beneficial
478 ownership interest in the facility or institution, as defined in subsection
479 (a) of section 19a-490.

480 Sec. 12. Section 19a-498 of the general statutes is repealed and the
481 following is substituted in lieu thereof (*Effective from passage*):

482 (a) Subject to the provisions of section 19a-493, as amended by this
483 act, the Department of Public Health shall make or cause to be made a
484 biennial licensure inspection of all institutions and such other
485 inspections and investigations of institutions and examination of their
486 records as the department deems necessary.

487 (b) The commissioner, or an agent authorized by the commissioner
488 to conduct any inquiry, investigation or hearing under the provisions
489 of this chapter, shall have power to inspect the premises of an
490 institution, issue subpoenas, order the production of books, records or
491 documents, administer oaths and take testimony under oath relative to
492 the matter of such inquiry, [or] investigation, or hearing. At any
493 hearing ordered by the department, the commissioner or such agent
494 may subpoena witnesses and require the production of records, papers
495 and documents pertinent to such inquiry. If any person disobeys such
496 subpoena or, having appeared in obedience thereto, refuses to answer
497 any pertinent question put to such person by the commissioner or such
498 agent or to produce any records and papers pursuant to the subpoena,
499 the commissioner or such agent may apply to the superior court for the
500 judicial district of Hartford or for the judicial district wherein the
501 person resides or wherein the business has been conducted, setting
502 forth such disobedience or refusal, and said court shall cite such
503 person to appear before said court to answer such question or to
504 produce such records and papers.

505 (c) The Department of Mental Health and Addiction Services, with
506 respect to any mental health facility or alcohol or drug treatment
507 facility, shall be authorized, either upon the request of the
508 Commissioner of Public Health or at such other times as they deem
509 necessary, to enter such facility for the purpose of inspecting programs
510 conducted at such facility. A written report of the findings of any such
511 inspection shall be forwarded to the Commissioner of Public Health
512 and a copy shall be maintained in such facility's licensure file.

513 (d) In addition, the Commissioner of Social Services, or a designated
514 representative of the Commissioner of Social Services, at the request of
515 the Office of Health Care Access or the Nursing Home Finance
516 Oversight Committee, established pursuant to section 17b-339, as
517 amended by this act, or when the Commissioner of Social Services
518 deems it necessary, may examine and audit the financial records of any
519 nursing home facility, as defined in section 19a-521, or any nursing
520 facility management services certificate holder, as defined in section

521 19a-561, as amended by this act. Each such nursing home facility or
522 nursing facility management services certificate holder shall retain all
523 financial information, data and records relating to the operation of the
524 nursing home facility for a period of not less than ten years, and all
525 financial information, data and records relating to any real estate
526 transactions affecting such operation, for a period of not less than
527 twenty-five years, which financial information, data and records shall
528 be made available, upon request, to the Commissioner of Social
529 Services or such designated representative at all reasonable times. In
530 connection with any inquiry, examination or investigation, the
531 commissioner or the commissioner's authorized agent may issue
532 subpoenas, order the production of books, records and documents,
533 administer oaths and take testimony under oath. The Attorney
534 General, upon request of said commissioner or the authorized agent of
535 the commissioner, may apply to the Superior Court to enforce any
536 such subpoena or order.

537 Sec. 13. Section 19a-503 of the general statutes is repealed and the
538 following is substituted in lieu thereof (*Effective July 1, 2009*):

539 Notwithstanding the existence or pursuit of any other remedy, the
540 Department of Public Health may, in the manner provided by law and
541 upon the advice of the Attorney General, conduct an investigation and
542 maintain an action in the name of the state for injunction or other
543 process against any person or governmental unit to restrain or prevent
544 the establishment, conduct, management or operation of an institution
545 or nursing facility management services, without a license or certificate
546 under this chapter.

547 Sec. 14. Section 19a-528a of the general statutes is repealed and the
548 following is substituted in lieu thereof (*Effective July 1, 2009*):

549 For any application of licensure for the acquisition of a nursing
550 home filed after July 1, 2004, any potential nursing home licensee or
551 owner must submit in writing, a change in ownership application with
552 respect to the facility for which the change in ownership is sought.
553 Such application shall include such information as the Commissioner

554 of Public Health deems necessary and whether such potential nursing
555 home licensee or owner (1) has had civil penalties imposed through
556 final order of the commissioner in accordance with the provisions of
557 sections 19a-524 to 19a-528, inclusive, or civil penalties imposed
558 pursuant to the statutes or regulations of another state, during [a] the
559 two-year period preceding the application, (2) has had in any state
560 [intermediate] sanctions, other than civil penalties of less than ten
561 thousand dollars, imposed through final adjudication under the
562 Medicare or Medicaid program pursuant to Title XVIII or XIX of the
563 federal Social Security Act, 42 USC 301, as from time to time amended,
564 or (3) has had in any state such potential licensee's or owner's
565 Medicare or Medicaid provider agreement terminated or not renewed.
566 [.] The commissioner shall not approve such application to acquire
567 another nursing home in this state for a period of five years from the
568 date of final order on such civil penalties, final adjudication of such
569 [intermediate] sanctions, or termination or nonrenewal, except for
570 good cause shown. Notwithstanding, the provisions of this section, the
571 Commissioner of Public Health, may for good cause shown, permit a
572 potential nursing home licensee or owner to acquire another nursing
573 home prior to the expiration of said five-year period.

574 Sec. 15. Section 19a-543 of the general statutes is repealed and the
575 following is substituted in lieu thereof (*Effective July 1, 2009*):

576 (a) As used in this section, (1) "severe financial distress" includes,
577 but is not limited to: (A) Allowing more than thirty-five per cent of the
578 facility's vendor accounts to be overdue for payment by more than one
579 hundred twenty days; (B) allowing the facility payment of required
580 employee pension or health insurance contributions to be overdue by
581 more than sixty days; (C) maintaining an unfavorable working capital
582 ratio of assets to liabilities for more than one fiscal year; (D)
583 maintaining minimal equity or reserves for more than one fiscal year;
584 (E) incurring significant operating losses for more than one fiscal year;
585 or (F) any other criteria defined by the Commissioner of Social Services
586 in regulations adopted pursuant to the provisions of chapter 54; and
587 (2) "related party" means persons or organizations related through an

588 ability to control, ownership, family relationship or business
589 association, and includes persons related through marriage.

590 (b) The court shall grant an application for the appointment of a
591 receiver for a nursing home facility upon a finding of any of the
592 following: (1) Such facility is operating without a license issued
593 pursuant to this chapter or such facility's license has been suspended
594 or revoked pursuant to section 19a-494; (2) such facility intends to
595 close and adequate arrangements for relocation of its residents have
596 not been made at least thirty days prior to closing; (3) such facility has
597 sustained a serious financial loss or failure which jeopardizes the
598 health, safety and welfare of the patients or there is a reasonable
599 likelihood of such loss or failure; [or] (4) there exists in such facility a
600 condition in substantial violation of the Public Health Code, or any
601 other applicable state statutes, or Title XVIII or XIX of the federal Social
602 Security Act, 42 USC 301, as amended, or any regulation adopted
603 pursuant to such state or federal laws; or (5) such facility is in severe
604 financial distress.

605 (c) The court, upon a determination pursuant to subsection (b) of
606 this section that a receiver is appropriate, may, in addition to
607 appointing a receiver for the nursing home facility, appoint a receiver
608 for: (1) Any person or entity providing nursing facility management
609 services, as defined in section 19a-561, as amended by this act, for such
610 facility; (2) any owner of real property, or improvements thereon, on
611 which such nursing home facility is located; or (3) any legal entity
612 owned or managed by a related party to the nursing home facility
613 owners providing goods or services to such facility. The court may
614 issue such orders as deemed necessary to any person that controls or
615 possesses assets necessary for the receiver to fulfill the duties as set
616 forth in section 19a-545.

617 (d) The commissioner, pursuant to section 17b-10, may implement
618 policies and procedures to administer the provisions of this section
619 while in the process of adopting such policies and procedures as
620 regulation, provided the commissioner prints notice of the intent to

621 adopt the regulations in the Connecticut Law Journal not later than
622 twenty days after the date of implementation. Such policies and
623 procedures shall be valid until the time final regulations are adopted.

624 Sec. 16. Subsection (b) of section 19a-546 of the general statutes is
625 repealed and the following is substituted in lieu thereof (*Effective from*
626 *passage*):

627 (b) If the receiver is in possession of real estate or goods subject to a
628 lease, mortgage or security interest [which] that the receiver is
629 permitted to avoid under subsection (a) of this section and if the real
630 estate or goods are necessary for the continued operation of the facility
631 under this section, the receiver may apply to the court to set a
632 reasonable rental, price or rate of interest to be paid by the receiver
633 during the duration of the receivership. No allowance for such
634 property costs set by the court shall exceed the fair rental value
635 allowance determined in accordance with the regulations adopted
636 pursuant to section 17b-238. The court shall hold a hearing not later
637 than fifteen days after application is made. Any known owners of the
638 property involved shall receive notice of such application from the
639 receiver at least ten days prior to the hearing. Payment by the receiver
640 of the amount determined by the court to be reasonable is a defense to
641 any action against the receiver for payment or for possession of the
642 goods or real estate subject to the lease, security interest or mortgage
643 involved by any person who received such notice, but the payment
644 does not relieve the owner of the facility of any liability for the
645 difference between the amount paid by the receiver and the amount
646 due under such lease, security interest or mortgage involved.

647 Sec. 17. Section 19a-547 of the general statutes is repealed and the
648 following is substituted in lieu thereof (*Effective July 1, 2009*):

649 (a) The court may appoint any responsible individual whose name
650 is proposed by the Commissioner of Public Health and the
651 Commissioner of Social Services to act as a receiver. Such individual
652 shall be a nursing home administrator licensed in the state of
653 Connecticut with substantial experience in operating Connecticut

654 nursing homes or shall possess such other experience and education
655 that the court deems satisfactory to appropriately and professionally
656 implement such receivership. On or before July 1, 2004, the
657 Commissioner of Social Services shall adopt regulations governing
658 qualifications for proposed receivers consistent with this subsection.
659 No state employee or owner, administrator or other person with a
660 financial interest in the facility may serve as a receiver for that facility.
661 No person appointed to act as a receiver shall be permitted to have a
662 current financial interest in the facility; nor shall such person
663 appointed as a receiver be permitted to have a financial interest in the
664 facility for a period of five years from the date the receivership ceases.

665 (b) The court may remove such receiver in accordance with section
666 52-513. A nursing home receiver appointed pursuant to this section
667 shall be entitled to a reasonable receiver's fee as determined by the
668 court. The receiver shall be liable only in his official capacity for injury
669 to person and property by reason of the conditions of the nursing
670 home. He shall not be personally liable, except for acts or omissions
671 constituting gross, wilful or wanton negligence.

672 (c) The court, in its discretion, may require a bond of such receiver
673 in accordance with section 52-506.

674 (d) The court may require the Commissioner of [Public Health]
675 Social Services to provide for the payment of any receiver's fees
676 authorized in subsection (a) of this section upon a showing by such
677 receiver to the satisfaction of the court that (1) the assets of the nursing
678 home facility are not sufficient to make such payment, and (2) no other
679 source of payment is available, including the submission of claims in a
680 bankruptcy proceeding. The state shall have a claim for any court-
681 ordered fees and expenses of the receiver and any state advance
682 payments to the nursing home facility after a receiver has been
683 appointed which shall have priority over all other claims of secured
684 and unsecured creditors and other persons whether or not the nursing
685 home facility is in bankruptcy. [, to the extent allowed under state or
686 federal law.]

687 Sec. 18. Section 19a-561 of the general statutes is repealed and the
688 following is substituted in lieu thereof (*Effective from passage*):

689 (a) As used in this section, "nursing facility management services"
690 means services provided in a nursing facility to manage the operations
691 of such facility, including the provision of care and services and
692 "nursing facility management services certificate holder" means a
693 person or entity certified by the Department of Public Health to
694 provide nursing facility management services.

695 (b) On and after January 1, 2007, no person or entity shall provide
696 nursing facility management services in this state without obtaining a
697 certificate from the Department of Public Health.

698 (c) Any person or entity seeking a certificate to provide nursing
699 facility management services shall apply to the department, in writing,
700 on a form prescribed by the department. Such application shall include
701 the following information:

702 (1) (A) The name and business address of the applicant and whether
703 the applicant is an individual, partnership, corporation or other legal
704 entity; (B) the names of the officers, directors, trustees or managing
705 and general partners of the applicant, the names of the persons having
706 a ten per cent or greater beneficial ownership interest in the applicant,
707 and a description of each such person's relationship to the applicant;
708 (C) if the applicant is a corporation incorporated in another state, a
709 certificate of good standing from the state agency with jurisdiction
710 over corporations in such state; and (D) a certificate of good standing
711 from the licensing agency with jurisdiction over public health for each
712 state in which the applicant currently provides nursing facility
713 management services;

714 (2) A description of the applicant's nursing facility management
715 experience;

716 (3) An affidavit signed by the applicant and any of the persons
717 described in subdivision (1) of this subsection disclosing any matter in

718 which the applicant or such person (A) has been convicted of an
719 offense classified as a felony under section 53a-25 or pleaded nolo
720 contendere to a felony charge, or (B) has been held liable or enjoined in
721 a civil action by final judgment, if the felony or civil action involved
722 fraud, embezzlement, fraudulent conversion or misappropriation of
723 property, or (C) is subject to a currently effective injunction or
724 restrictive or remedial order of a court of record at the time of
725 application, or (D) within the past five years has had any state or
726 federal license or permit suspended or revoked as a result of an action
727 brought by a governmental agency or department, arising out of or
728 relating to business activity or health care, including, but not limited
729 to, actions affecting the operation of a nursing facility, residential care
730 home or any facility subject to sections 17b-520 to 17b-535, inclusive, or
731 a similar statute in another state or country; and

732 (4) The location and description of any nursing facility in this state
733 or another state in which the applicant currently provides
734 management services or has provided such services within the past
735 five years.

736 (d) In addition to the information provided pursuant to subsection
737 (c) of this section, the department may reasonably request to review
738 the applicant's audited and certified financial statements, which shall
739 remain the property of the applicant when used for either initial or
740 renewal certification under this section.

741 (e) Each application for a certificate to provide nursing facility
742 management services shall be accompanied by an application fee of
743 three hundred dollars. The certificate shall list each location at which
744 nursing facility management services may be provided by the holder
745 of the certificate.

746 (f) The department shall base its decision on whether to issue or
747 renew a certificate on the information presented to the department and
748 on the compliance status of the managed entities. The department may
749 deny certification to any applicant for the provision of nursing facility
750 management services at any specific facility or facilities where there

751 has been a substantial failure to comply with the Public Health Code,
752 or failure to provide the information required under subparagraph (D)
753 of subdivision (1) of subsection (c) of this section.

754 (g) Renewal applications shall be made biennially after (1)
755 submission of the information required by subsection (c) of this section
756 and any other information required by the department pursuant to
757 subsection (d) of this section, and (2) submission of evidence
758 satisfactory to the department that any nursing facility at which the
759 applicant provides nursing facility management services is in
760 substantial compliance with the provisions of this chapter, the Public
761 Health Code and licensing regulations, and (3) payment of a three-
762 hundred-dollar fee.

763 (h) In any case in which the Commissioner of Public Health finds
764 that there has been a substantial failure to comply with the
765 requirements established under this section, or if the department
766 receives information from a licensing agency with jurisdiction over
767 public health in another state that the holder is not in good standing in
768 such state, the commissioner may initiate disciplinary action against a
769 nursing facility management services certificate holder pursuant to
770 section 19a-494. In addition to the remedies provided under section
771 19a-494, the commissioner may also assess such certificate holder a
772 civil penalty not to exceed fifteen thousand dollars per violation for
773 any class A or class B violation, as defined in section 19a-527, that
774 occur at a nursing facility for which such holder provides nursing
775 facility management services. Failure to pay such penalties shall be
776 subject to the remedies provided in section 19a-526.

777 (i) The department may limit or restrict the provision of
778 management services by any nursing facility management services
779 certificate holder against whom disciplinary action has been initiated
780 under subsection (h) of this section.

781 (j) The department, in implementing the provisions of this section,
782 may conduct any inquiry or investigation, in accordance with the
783 provisions of section 19a-498, as amended by this act, regarding an

784 applicant or certificate holder.

785 (k) Any person or entity providing nursing facility management
786 services without the certificate required under this section shall be
787 subject to a civil penalty of not more than one thousand dollars for
788 each day that the services are provided without such certificate.

789 Sec. 19. Section 19a-544 of the general statutes is repealed and the
790 following is substituted in lieu thereof (*Effective July 1, 2009*):

791 It shall be a sufficient defense to a receivership application if any
792 owner of a nursing home facility establishes that, (1) [he] such owner
793 did not have knowledge or could not reasonably have known that any
794 conditions in violation of section 19a-543, as amended by this act,
795 existed, or (2) [he] such owner did not have a reasonable time in which
796 to correct such violations, or (3) the violations listed in the application
797 do not, in fact, exist or, in the event the grounds upon which the
798 petition is based are those set forth in subdivision (2) of subsection (b)
799 of section 19a-543, as amended by this act, the facility does not intend
800 to close.

801 Sec. 20. Section 19a-549 of the general statutes is repealed and the
802 following is substituted in lieu thereof (*Effective July 1, 2009*):

803 The Superior Court, upon a motion by the receiver or the owner of
804 such facility, may terminate the receivership if it finds that such facility
805 has been rehabilitated so that the violations complained of no longer
806 exist or if such receivership was instituted pursuant to subdivision (2)
807 of subsection (b) of section 19a-543, as amended by this act, the orderly
808 transfer of the patients has been completed and such facility is ready to
809 be closed. Upon such finding, the court may terminate the receivership
810 and return such facility to its owner. In its termination order the court
811 may include such terms as it deems necessary to prevent the
812 conditions complained of from recurring.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2009</i>	New section
Sec. 2	<i>July 1, 2009</i>	17b-351
Sec. 3	<i>from passage</i>	17b-352
Sec. 4	<i>from passage</i>	17b-339
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	17b-4
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>July 1, 2009</i>	New section
Sec. 10	<i>July 1, 2009</i>	19a-491(b)
Sec. 11	<i>July 1, 2009</i>	19a-493(b)(2)
Sec. 12	<i>from passage</i>	19a-498
Sec. 13	<i>July 1, 2009</i>	19a-503
Sec. 14	<i>July 1, 2009</i>	19a-528a
Sec. 15	<i>July 1, 2009</i>	19a-543
Sec. 16	<i>from passage</i>	19a-546(b)
Sec. 17	<i>July 1, 2009</i>	19a-547
Sec. 18	<i>from passage</i>	19a-561
Sec. 19	<i>July 1, 2009</i>	19a-544
Sec. 20	<i>July 1, 2009</i>	19a-549

PH *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Department of Social Services	GF - Cost	300,000	300,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	76,290	76,290
Resources of the General Fund	GF - Revenue Gain	Potential	Potential

Municipal Impact: None

Explanation

This bill makes a variety of changes concerning the financial oversight requirements of nursing homes. It also implements further reporting mandates, insurance requirements and certain financial restrictions for nursing homes and related entities.

It is anticipated that the Department of Social Services (DSS) will need up to 5 additional positions (at an annual cost of approximately \$300,000) to meet the additional oversight responsibilities included in the bill. It should be noted that SHB 6365 (the biennial budget bill, as favorably reported by the Appropriations Committee) included funding for 5 positions at DSS for enhanced financial oversight of nursing homes.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The state may realize a revenue gain should DSS or the Department of Public Health impose the various civil penalties included in the bill.

Should the provisions of this bill enhance the financial condition and stability of the nursing home system, the state may realize savings under the Medicaid program through fewer interim rate increases and homes in receivership.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 845*****AN ACT CONCERNING OVERSIGHT OF NURSING HOMES.*****SUMMARY:**

This bill makes numerous changes in the law related to the financial oversight, management, operation, and licensure of nursing homes. It:

1. establishes new financial reporting requirements for nursing homes and nursing facility management services certificate holders;
2. allows the court to appoint a receiver of a nursing home upon a finding of "severe financial distress";
3. makes changes to the Department of Public Health's (DPH) certification process for management companies operating nursing homes;
4. requires nursing home property or building owners to comply with Public Health Code requirements concerning property maintenance and repair;
5. requires nursing home owners to annually submit to DSS along with its cost report, proof of liability insurance coverage;
6. changes the certificate of need (CON) and licensure requirements when a nursing home changes ownership;
7. places certain restrictions on a nursing home operator's ability to acquire a nursing home if they violate nursing home laws in Connecticut or in another state or have nursing home problems related to Medicare and Medicaid;

8. renames the Nursing Home Financial Advisory Committee and makes changes to its membership and duties;
9. places restrictions on nursing home indebtedness, rental payments, loan payments, and management fees;
10. requires DPH to provide a direct link on its website to the federal Nursing Home Compare website; and
11. requires the DSS commissioner to conduct a statewide inventory of all nursing home beds and establishes related reporting requirements.

(Different sections of the bill apply to different types of facilities. Some apply just to nursing homes, others apply also to residential care homes, rest homes, and intermediate care facilities for the mentally retarded.)

EFFECTIVE DATE: July 1, 2009 except for the provisions pertaining to CON; financial reporting requirements; the Nursing Home Financial Advisory Committee; management, loan, and rental payments; DPH and DSS investigations of healthcare institutions; nursing facility management services certification; and allowable property costs for homes in receivership, which take effect upon passage.

§ 1 — FEDERAL NURSING HOME COMPARE WEBSITE

The bill requires DPH to prominently place a direct link on its website to the federal Centers for Medicare and Medicaid (CMS) “Nursing Home Compare” database. This database is a national, online nursing home report card first published in 2002. It provides information on every Medicare- and Medicaid- certified nursing home in each state, including inspection results, hours of direct care, and 19 quality measures for short- and long-term residents.

§ 2 — STATEWIDE NURSING HOME BED INVENTORY

Starting December 31, 2009, the bill requires the DSS commissioner to consult with the DPH commissioner and complete an annual

statewide inventory of all publicly and privately funded nursing home beds. This inventory must be completed within available appropriations.

The bill requires the DSS commissioner to submit annual reports, starting January 1, 2010, to the Human Services and Public Health committees. The report must include the results of the inventory and identify (1) geographic areas of the state that need additional nursing home beds, (2) the number of beds needed in these areas, and (3) any geographic areas that have a surplus of beds.

§ 3 — CERTIFICATE OF NEED (CON)

The bill requires a nursing home, intermediate care facility for the mentally retarded (ICF-MR), or a residential care home to apply to DSS for a CON whenever a transfer of its ownership or control is proposed, not just when this occurs before the home is first licensed. Because of the current moratorium on new nursing home beds, nursing homes can assume ownership of existing beds only through such a transfer. Therefore, DSS is not currently issuing CONs for such transfers.

The bill applies to all proposed transfers the current requirement that a CON applicant submit a letter of intent to DSS before submitting the CON application. It consequently extends to any facility proposing an ownership or control transfer the current requirement that it notify the Office of the Long Term Care Ombudsman that it has submitted a letter of intent. It exempts all proposed transfers from the requirement that the letter of intent include the capital costs, location, and project description.

The bill adds the following factors for DSS to consider when it reviews a CON transfer application:

1. the applicant's financial condition and viability,
2. the impact of the transfer on the home's payment rate,
3. any real property lease or debt instrument, and

4. any nursing facility management services agreement.

The law already requires DSS to consider the applicant's financial responsibility and business interests and whether the facility is able to continue to provide needed services.

§§ 4 & 7 — NURSING HOME FINANCIAL ADVISORY COMMITTEE

The bill changes the name of the Nursing Home Financial Advisory Committee to the Nursing Home Financial Oversight Committee and removes three members: the director of the Office of Fiscal Analysis or his designee and one representative each from the nonprofit and for-profit nursing home industries. It adds the comptroller and the long-term care ombudsman or their designees to the committee's membership. The DSS and DPH commissioners, the secretary of OPM, and the executive director of the Connecticut Health and Educational Facilities Authority (CHEFA) or their designees remain committee members. The bill also removes the current requirement that vacancies be filled by the appointing authority.

The bill requires the committee to recommend appropriate action to the DPH commissioner, as it must currently do for the DSS commissioner, when it receives a report relating to nursing homes' financial solvency and quality of care. It removes the requirement that the committee's recommendations be limited to improving the financial condition of homes in financial distress. The DSS commissioner must also notify the committee of any nursing home's interim rate request.

Starting January 1, 2010, the bill requires the committee to report annually on its activities to the Appropriations Committee, as well as the Human Services, Public Health, and Aging committees. And starting October 1, 2009, the committee must also meet quarterly with the chairpersons and ranking members of the Appropriations, Human Services, and Public Health Committees to discuss its activities relating to nursing homes' financial solvency and quality of care.

The bill repeals DSS' authority, in conjunction with DPH, to adopt

regulations to establish requirements for the reports on nursing homes' financial solvency and quality of care that are submitted to the Nursing Home Financial Advisory Committee (CGS §17b-4 (c)).

The committee examines nursing homes' financial solvency, supports DSS and DPH's oversight mission, and recommends appropriate action for improving the financial condition of any home in financial distress.

§§ 5 & 6 — FINANCIAL REPORTING REQUIREMENTS

The bill establishes new financial reporting requirements for nursing homes. Beginning July 1, 2009, it requires every home to obtain an annual independent audit and submit a copy of it to the DSS commissioner. The commissioner may also require homes to submit quarterly accounts payable reports in a format he prescribes. If the reports indicate a home is experiencing financial distress, the commissioner may require the home to report additional financial information, including debt agreements and interim financial statements.

The commissioner may also require any nursing facility management services certificate holder or any individual or entity that has at least a 10% beneficial ownership in the certificate holder or a nursing home to report financial information on any homes it manages or owns, including those in other states. Under the bill, "beneficial ownership" includes ownership through any level or relationship of parent and subsidiary corporations or partnerships.

If, after reviewing the above financial information or the home's annual cost report (financial information submitted annually to DSS for the purposes of rate setting), the DSS commissioner determines that a home's financial condition has changed for the worse, he must notify the DPH commissioner and the Nursing Home Financial Oversight Committee. He may also require the nursing home to report (1) monthly on its cash availability, vendor payment status, and employee payrolls; and (2) additional financial information to help determine the

home's financial condition.

The bill also requires him to report to the Human Services, Public Health, and Appropriations committees and the Nursing Home Financial Oversight Committee if he finds that a home is in financial distress and may not meet its operating costs. The report must be submitted in a format prescribed by the Nursing Home Financial Oversight Committee.

The bill also requires a nursing facility management services certificate holder whose rates are set by DSS to report its annual costs to DSS, upon the commissioner's request. It must submit its report by December 31 for the fiscal year ending September 30.

The bill establishes criteria for the DSS commissioner to use to evaluate whether a nursing home's financial situation has deteriorated, including:

1. the frequency of Medicaid advances DSS grants it as permitted by law;
2. unfavorable ratios of working capital assets to liabilities;
3. a high proportion of accounts receivable or payable for more than 90 days;
4. significant increases in accounts payable, unpaid state or local taxes, state user fees, or payroll related costs;
5. minimal or decreasing equity or reserves;
6. high levels or significant increases in debt and borrowing costs; and
7. significant operating losses for two or more consecutive years.

Currently, nursing homes annually submit financial information to DSS for the purpose of rate setting. The information they submit includes expenditures, revenue, and balance sheet data. DSS audits

this information but does not use it to determine the home's financial viability.

§§ 6 & 8 — DEBT, RENT, LOAN AND MANAGEMENT FEE RESTRICTIONS

The bill establishes certain restrictions on rent, debt, loan, and management fees a nursing home pays. It applies to (1) any indebtedness or lease entered into on or after June 30, 2009 and (2) any management fees that take effect on or after April 1, 2008. (It is unclear how DSS would restrict fees set in April, 2008).

It defines "related party" as an individual or organization related to a nursing home owner through an ability to control, ownership, family relationship, business association, including individuals related through marriage.

Management Fee and Loan Restrictions

The bill prohibits a nursing facility management services certificate holder related to a nursing home owner from being paid fees, including expenses from a facility for which it provides services, that exceed the management fee DSS sets for the home, unless DSS sets a higher fee after conducting a financial review of the agency.

It also requires a nursing home owner to use the proceeds of a loan secured with nursing home assets solely for the home's operation and improvement unless approved by the DSS commissioner.

Debt and Rent Restrictions

The bill requires the DSS commissioner, in consultation with the banking commissioner and the Connecticut Health and Educational Facilities Authority (CHEFA) executive director, to establish reasonable rates of indebtedness and property lease payments for nursing homes. It prohibits a nursing home or any related party that owns the property on which the home is located from increasing its property lease payments or indebtedness beyond the established levels without the DSS commissioner's permission. DSS must approve, deny, or modify a home's or related property owner's request within 60 days

after the requestor submits any information the commissioner asks for, but may do so only if it determines the request will not adversely affect the home's financial viability or quality of care.

Violations

The bill allows the DPH commissioner to take certain enforcement actions for violations, including revoking or suspending the home's license and restricting its acquisition of other facilities. It also allows the DSS commissioner to impose, for loan and rental payment violations, a civil penalty of up to \$25,000; and for management fee violations, \$15,000 plus the amount by which the fee exceeds the DSS-approved fee. DSS may refer its finding to the DPH commissioner for appropriate action.

§ 9 — PROOF OF LIABILITY INSURANCE COVERAGE

The bill requires nursing homes to annually submit to DSS along with its cost report, proof of liability insurance coverage on a form prescribed by DSS. The home must show its coverage for negligence or medical malpractice and property damage and the coverage amounts. (The bill does not establish minimum coverage amounts.)

Starting January 1, 2010, the bill requires DSS to annually report information concerning nursing homes' liability insurance coverage to the Human Services Committee.

By law, nursing home owners must submit certificates of malpractice and public liability insurance coverage to DPH as a condition of licensure; the law does not specify minimum coverage amounts.

§ 10 — FACILITY MAINTENANCE AND REPAIRS

Under current law, nursing home, residential care home, or rest home property or building owners that are not the facility's license holder must submit a copy of the lease agreement to DPH indicating the person or entity responsible for maintenance and repair. The lease must be submitted whenever the facility's license is renewed and whenever the property owner changes.

If a DPH investigation reveals any Public Health Code violations, the law allows the commissioner to require the owner to sign a consent order to bring the facility into compliance. The bill allows the commissioner, alternatively to impose a civil penalty of up to \$1,000 for each day the owner violates the code or the consent order. It also permits the consent order to include the appointment of a temporary manager to complete any required improvements or repairs. It allows the attorney general, at the DPH commissioner's request, to petition the Superior Court for an injunction to ensure compliance with the consent order.

§ 11 — CHANGES IN BENEFICIAL OWNERSHIP

Current law requires DPH to give its prior approval for a change in ownership or beneficial ownership of 10% or more of the stock of a corporation that owns, operates, or maintains a nursing home, residential care home, or rest home. The bill specifies that beneficial ownership includes ownership through any level or relationship of parent and subsidiary corporations and partnerships.

It also requires the owner to provide to DPH the identities of, and any additional information DPH requires on, individual shareholders, partners, or members that have a beneficial interest in the facility or any healthcare institution, such as a hospital, home health care agency, assisted living services agency, or homemaker-home health aide agency.

§ 12 — DPH AND DSS INVESTIGATIONS

The bill allows the DPH commissioner when conducting an inquiry or investigation involving any healthcare institution to (1) issue subpoenas and (2) order the production of books, records, and documents. The law already allows the commissioner to do this when conducting a hearing. The law also allows him to inspect facilities, administer oaths, and take testimony under oath.

The bill allows the DSS commissioner, or his designee, to examine or audit the financial records of a nursing facility management

certificate holder when the commissioner believes it is necessary or either the Office of Health Care Access or Nursing Home Financial Oversight Committee requests it. It requires nursing facility management services certificate holders, as nursing homes must currently do, to maintain (1) all financial information, data, and records of its operation for at least 10 years and (2) all financial information, data, and records relating to any real estate transactions affecting its operation for at least 25 years.

Finally, when conducting an inquiry, examination, or investigation of a nursing home or nursing facility management services certificate holder, the bill allows the DSS commissioner, or his agent, to (1) issue subpoenas; (2) order the production of books, records, or documents; (3) administer oaths; and (4) take testimony under oath. The commissioner, or his agent, may also ask the attorney general to petition the Superior Court to enforce any subpoena or order.

§ 14 — NURSING HOME ACQUISITION

The law prohibits a nursing home operator who has violated nursing home laws or had problems related to Medicare and Medicaid from acquiring a nursing home for five years. It applies to an operator with any civil penalties for nursing home violations imposed by DPH or another state over two years. The prohibition also applies to operators who have received Medicare or Medicaid sanctions or had their provider agreements for these programs terminated or not renewed.

The bill limits the prohibition (1) for civil penalties, to those imposed during the two years before submitting the application, rather than any two-year period and (2) for Medicare and Medicare sanctions, to those other than civil penalties under \$10,000. (Current law imposes the acquisition prohibition for any intermediate Medicare or Medicaid sanctions.) The application must also include any additional information the DPH commissioner deems necessary. Under the bill, if any of these conditions is present, the five-year prohibition on further acquisition continues to apply.

Notwithstanding these limitations, the law allows the DPH commissioner, for good cause, to approve a potential licensee's or owner's application to acquire a nursing home before the five-year period expires.

§§ 15-17 — NURSING HOME RECEIVERSHIP

Conditions for Appointment

The bill adds "severe financial distress" as a ground on which the court can appoint a receiver for a nursing home facility. (The law defines these as nursing homes, residential care homes, and rest homes with 24-hour nursing supervision (CGS § 19a-521). But, residential care homes do not provide nursing care.) It defines "severe financial distress" as:

1. having more than 35% of the facility's vendor accounts overdue by more than 120 days,
2. having payment of required employee pension and health insurance contributions that are more than 60 days overdue,
3. maintaining an unfavorable ratio of working capital assets to liability for more than one fiscal year,
4. incurring significant operating losses or maintaining minimal equity or reserves for more than one fiscal year, and
5. any other criteria DSS defines in regulations.

The bill permits the DSS commissioner to implement policies and procedures to define other financial distress criteria while in the process of adopting them in regulation, provided notice is published in the *Connecticut Law Journal* no later than 20 days after they are implemented. The policies and procedures are valid until final regulations are adopted.

Currently, a court may appoint a receiver for a nursing home if the home:

1. is operating without a license or has had its license suspended or revoked;
2. intends to close and has not made adequate arrangements to relocate its residents at least 30 days before closing;
3. experienced or is likely to experience a serious financial loss or failure that jeopardizes the health and safety of its residents; or
4. substantially violates the Public Health Code, other state laws, or Medicaid or Medicare rules.

In addition to appointing a receiver for the home, the bill also allows the court to appoint a receiver for (1) any individual or entity providing nursing facility management services in the home, (2) any owner of the property on which the home is located or the buildings it uses, or (3) any legal entity owned or managed by a related party to the nursing home owner that provides goods or services to the home. The bill defines “related party” as an individual or organization related to a nursing home owner through an ability to control, ownership, family relationship, or business association including individuals related through marriage.

It allows the court to issue any necessary orders to a person that controls or possesses assets the receiver needs to fulfill his or her responsibilities.

Choice of Nursing Home Receivers

Current law requires a court, in appointing a receiver for a nursing home, to choose a responsible individual who (1) the DSS and DPH commissioners propose and (2) is a Connecticut-licensed nursing home administrator with substantial experience in operating Connecticut nursing homes. The bill allows the court to appoint an unlicensed person if the individual has other experience and education the court deems satisfactory.

The bill allows the court to require the DSS commissioner, instead of

the DPH commissioner, to pay a nursing home receiver's fees if it determines that the home's assets are insufficient to do so and no other payment source is available. The state has a claim on the home's assets for these payments. The bill gives the state a claim for any advance payments the state makes after the receiver's appointment. It adds these costs to the requirement that claims for receiver's fees have priority over all other creditors' claims, but it removes the limitation that these claims have priority to the extent allowed by state or federal law.

Allowable Property Costs for Homes in Receivership

The bill prohibits a court, in certain situations, from setting property costs (rent, price, or interest rate) for nursing homes in receivership that exceed the fair rental allowance DSS sets for the facility.

By law, a receiver may not be required to honor a nursing home's lease or mortgage agreement if a court finds (1) the payment is due to someone who was an owner or controlling stockholder of the home when the agreement was made, or their affiliate, or (2) the rent or property costs were substantially higher than what was reasonable at the time the contract was made. If the court grants such an exception but the real estate is necessary to continue to operate the home, the receiver can ask the court to set reasonable costs for the receiver to pay. The bill caps these costs at the fair rental allowance DSS sets for the facility. Current law sets no limits on the amount the receiver may request.

§§ 13 & 18 — NURSING FACILITY MANAGEMENT SERVICES CERTIFICATION

The bill adds to the required information an applicant must submit to DPH to obtain a nursing facility management services certificate. It defines a "nursing facility management services certificate holder" as an individual or entity DPH certifies to provide nursing facility management services. The law defines "nursing facility management services" as services provided in a nursing home to manage the home's operations, including the provision of care and services.

By law, “nursing home facilities,” are nursing homes, residential care homes, or rest homes with 24-hour nursing supervision (CGS § 19a-521). But nursing facility management services do not serve residential care homes, thus it appears this section does not apply to these facilities.

Contact Information

The bill requires an applicant to provide the names of (1) its officers, directors, trustees, or managing and general partners and (2) anyone having 10% or more beneficial ownership interest in the applicant and a description of their relationship to the applicant. If the applicant is an out-of state corporation, it must also provide a certificate of good standing from the agencies in that state that oversee corporations and public health licensing.

Current law requires an applicant to provide only its name and business address and indicate whether it is an individual, partnership, corporation, or other legal entity.

Affidavits

The bill requires that each individual listed above, not just the applicants, sign the affidavits that current law requires applicants to submit disclosing the following:

1. any matter in which the person was convicted of or pleaded nolo contendere to a felony charge, or was held liable or enjoined in a civil action, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property or
2. whether the person (a) has, within the past five years, had any state or federal license or permit suspended or revoked as a result of a government action related to health care or business activity, including actions affecting the operation of a nursing, continuing care, or residential care home in Connecticut or elsewhere or (b) is subject to a current injunction, restrictive, or remedial court order at the time of the application.

Disclosure of additional nursing homes

The bill requires an applicant to disclose the location and description of any out-of-state nursing home in which it currently provides management services or provided such services in the past five years.

Certification Determinations

The bill adds a condition under which DPH may wholly or partially refuse to issue or renew a certificate. It can deny certification to provide services at one or more facilities to an applicant that provided services in an out-of-state nursing home and failed to provide a certificate of good standing from the public health licensing agency in that state. The law already permits such denial for substantial noncompliance with the Public Health Code at a facility.

Investigations

The bill allows DPH to conduct an inquiry or investigation concerning the issuance or renewal of a nursing facility management services certificate.

It also permits DPH, when the attorney general advises it, to conduct an investigation and seek an injunction or other action against uncertified nursing facility management services. Current law allows this for unlicensed health care institutions.

Penalties

Under current law, if DPH finds substantial noncompliance with the certification requirements, the commissioner can initiate disciplinary action against an agency. The bill permits DPH to take disciplinary action if it receives information from an out-of-state public health licensing agency that an out-of-state nursing home for which the certificate holder has provided services has substantially failed to comply with that state's applicable laws and regulations.

The bill also allows the commissioner to impose a civil penalty on the management services agency of up to \$15,000 per violation for any

class A or class B violation that occurs at a nursing home at which it provides management services. (A class A violation is one that presents an immediate danger of death or serious harm to a nursing home patient; a class B violation is one that presents a probability of death or serious harm.)

If the fine is not paid within 15 days, or the last day for appealing the penalty, or 15 days after a final Superior Court judgment on an appeal, the DPH commissioner must notify the DSS commissioner, who may immediately withhold the amount of the civil penalty from the nursing home's next Medicaid payment.

The bill also allows the DPH commissioner to impose a civil penalty of up to \$1,000 per day against an individual or entity operating without a certificate.

§§ 19 & 20 — TECHNICAL CHANGES

The bill makes technical and conforming changes in the public health statutes pertaining to nursing home receivership.

BACKGROUND

Related Bill

sHB 6400, reported favorably by the Human Services Committee, makes numerous changes in the law related to the financial oversight, management, operation, and licensure of nursing homes.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 30 Nay 0 (03/26/2009)